Supreme Court, U. S.
FILED
DEC 27 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. ~~78-~~ 1040

THE HOPEDALE MEDICAL FOUNDATION,
Petitioner.

vs.

TAZEWELL COUNTY COLLECTOR,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS THIRD DISTRICT.

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IN THE

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THE HOPEDALE MEDICAL FOUNDATION,
Petitioner,

vs.

TAZEWELL COUNTY COLLECTOR,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS THIRD DISTRICT.

The Petitioner, The Hopedale Medical Foundation, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Appellate Court of Illinois, Third District, entered on May 11, 1978 and affirmed by virtue of the denial of a Petition for Leave to Appeal by the Illinois Supreme Court on September 28, 1978.

OPINIONS BELOW.

The opinion of the Appellate Court of Illinois, Third District is Appendix A hereto. The denial of the Petition for Leave to Appeal to the Illinois Supreme Court is unreported and is Appendix B hereto. The judgment of the Circuit Court of the Tenth Judicial Circuit, Tazewell County, Illinois is unreported and set forth as Appendix C hereto.

JURISDICTION.

This action was initiated as eight separate tax objection proceedings for the years 1967 through 1974 each seeking a declaration that petitioner's real estate was used for charitable purposes and therefore, exempt from county real estate taxes. After a consolidated trial, judgments were entered by the Circuit Court of the Tenth Judicial Circuit, Tazewell County, Illinois on September 3 and September 16, 1976 denying the tax exempt status sought and finding petitioner responsible for substantial amounts of penalty interest at the rate of one percent (1%) per month on the balance of unpaid real estate taxes. After a timely Notice of Appeal, the Appellate Court of Illinois, Third District, affirmed the Circuit Court in all respects on May 11, 1978. A timely filed Petition for Leave to Appeal to the Illinois Supreme Court was denied on September 28, 1978. No petition for rehearing was filed and this petition for writ of certiorari is filed on or before December 27, 1978.

This Court's jurisdiction is invoked under 28 U. S. C., § 1257(c).

QUESTIONS PRESENTED FOR REVIEW.

I.

Whether the Illinois statutory scheme allowing the owner of real estate to challenge the imposition of real estate taxes on its property violates the first and fourteenth amendments to the Constitution of the United States by penalizing the right to have free access to the courts without penalty?

II.

Whether the conclusive effect given by the Illinois Appellate Court to a stipulation in a prior case involving different issues can foreclose petitioner's right to raise all possible defenses

and thereby violate its fourteenth amendment rights to due process of law?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

UNITED STATES CONSTITUTION, Amendment I:

> "Congress shall make no law . . . abridging . . . the right . . . to petition."

UNITED STATES CONSTITUTION, Amendment XIV:

> ". . . No state shall make or enforce any law which shall . . . deprive any person of life, liberty or property, without due process of law; . . ."

ILL. REV. STAT., Ch. 120, § 675 which provides in pertinent part:

> "If any person desires to object pursuant to Section 235 of this Act to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of the tax installments due, and such payment shall be accompanied by a writing, substantially in the following form:"

ILL. REV. STAT., Ch. 120, § 705 which provides in pertinent part:

> "Except as herein otherwise provided for counties containing 1,000,000 or more inhabitants all real estate upon which the first installment of taxes for the year 1950 remains unpaid on the first day of July 1951 shall be deemed delinquent as to such first installment and such unpaid first installment shall bear interest after the first day of July 1951 at the rate of 1% per month until paid or forfeited, and all real estate upon which the first of taxes for years subsequent to the year 1951 remains unpaid on the first day of June annually shall be deemed delinquent as to such first installment and except as may be provided pursuant to Section 224.1, and such unpaid first installment shall bear interest after the first day of June annually at the rate of 1% per month until paid or forfeited; and all real estate upon which the second installment of taxes remains due

and unpaid on the first day of September, annually, shall be deemed delinquent as to such second installment, and such unpaid taxes as to such second installment shall bear interest after the first day of September, at the rate of one percent per month until paid or forfeited."

STATEMENT OF THE CASE.

Petitioner (hereinafter sometimes referred to as "Hopedale Medical Complex", "Complex" or "Foundation") is a not-for-profit charitable corporation operating a multifaceted health care facility including a hospital, nursing home, sheltered care residence, nurses' quarters and surgical suite on five acres of land in Hopedale, Illinois, a rural community of some nine hundred people, located approximately forty miles from Peoria and one hundred sixty miles from Chicago, Illinois. It serves the rural communities of Manito, Delavan, Emden, Minier and McLean, Illinois. The nearest comparable facilities being more than twenty miles from Hopedale and the various communities served.

Petitioner is and has been operating as a charitable organization exempt from federal income tax under 26 U. S. C., § 501(c)(3). It has a like exemption from state income taxation. It has, however, *never* since its inception in 1961 been exempted from Tazewell County property taxes, a fact which is the basis of the proceedings below.

In 1970 the Illinois Supreme Court decided *People ex rel. County Collector* v. *Hopedale Medical Foundation,* 46 Ill. 2d 450, 264 N. E. 2d 4 (1970) holding petitioner not to be entitled to an exemption from Tazewell County real estate taxation for the years 1961 through 1966 because of the benefits that "inured" to Lawrence J. Rossi, M.D., the founder, creator, medical director, and from 1955 to 1967 the only physician at the Hopedale Medical Complex. The Illinois Supreme Court reversed the lower court's determination that the Foundation was a charitable organization entitled to real estate tax exemption, also reversing the division of the various components of the Complex by the trial court into charitable and non-charitable facilities (a division that was not based on the evidence and contrary to a stipulation of the parties for purposes of appeal).

Unlike the prior case, the proceedings below were initiated by petitioner for the years 1967 through 1974 seeking declaratory judgments that the Complex was exempt from real estate tax, or alternatively alleging that certain physical parts or divisions of the Complex were not subject to the disqualifying factors enumerated in the prior Illinois Supreme Court decision.

The trial court found petitioner not to be operated exclusively for charitable purposes due to the benefits enjoyed from the operation of the Complex by Dr. Rossi and despite the following finding:

> "There is no question in the Court's mind, and I would suspect in anybody's mind, but that The Hopedale Medical Complex is both a unique and a fine health care facility and is of great benefit to the people of the Hopedale community and the surrounding areas. I also do not view the defense of this case from the Court's standpoint as any reflection on the ability, or integrity, and dedication to principles, or any bad reflection, either on Dr. Rossi or The Hopedale Medical Complex. The evidence in this case would indicate that Dr. Rossi has performed a life's public service to the Hopedale area and the community; that he has been responsible for the birth and operation of a very successful medical complex in this area. So far as I know, his services as a physician and surgeon, and anesthetist, and as a director of The Hopedale Medical Complex, have been exemplary, and extremely successful."

The Appellate Court affirmed in all respects and rejected petitioner's division of facilities argument on the basis of the stipulation in the prior tax case. The Illinois Supreme Court refused to review that decision. By virtue of the opinions below, not only must petitioner remit real estate taxes to Tazewell County for the years 1967 through 1974, it must also pay out penalty interest accruing at the rate of one percent per month which may amount to over two hundred thousand dollars.

REASONS FOR GRANTING THE WRIT.

1.

Petitioner Having Used the Statutory Remedy Made Available to It to Sue for Declaratory Judgment, Has Now Been Penalized, if Not Destroyed, for Exercising That Right.

The Revenue Act of the State of Illinois, *Ill. Rev. Stat.*, Ch. 120, § 1 *et seq.* provides two different methods for challenging the assessment or amount of property taxes on a parcel of real estate, viz: (1) the real estate owner may pay the tax under protest and sue for a refund; or (2) if the owner disputes that the property is subject to tax, he may file a declaratory judgment action seeking a judicial determination of that fact. The failure to initiate either procedure will result in the imposition of penalty interest at the rate of one percent per month on the unpaid balance. If full payment plus interest is not made the property may be lost at a subsequent tax sale. *Ill. Rev. Stat.*, Ch. 120, § 675, 705 (1977).

The penalty interest assessed is not a charge for the use of money, but a true penalty designed to insure timely payment to the taxing authority. *People ex rel. Stuckart* v. *Chicago Lakeshore Ry. Co.*, 270 Ill. 477 (1915).

Had petitioner paid the taxes under protest and then prevailed in a refund action, no interest would have been allowed on the monies recouped because no allowance for interest payments by the taxing bodies is provided for in the statutes. *Lakefront Realty Corp.* v. *Lorenz*, 19 Ill. 2d 415, 167 N. E. 2d 236 (1960). Regarding the imposition of interest, respondent has by virtue of the opinion below prevailed in a "head I win, tails you lose" situation. Hopedale Medical Foundation now finds itself subject to penalty interest payments that could equal the amount of taxes owed simply because it chose to avail itself of a statutory right and in the words of the Illinois Appellate Court:

> "Elected not to pay under protest even a portion of the taxes assessed against its property, but instead filed objections each year and sought relief by a suit for declaratory judgment."

Clearly, the imposition of penalty interest in this cause violates both the spirit and letter of the first and fourteenth amendments with the attendant abhorrent chilling factors. Procedural due process at a minimum requires that a litigant be given the opportunity to seek judicial redress without sanction or penalty for doing so. *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U. S. 508 (1972).

2.

Petitioner Was Foreclosed from Asserting Its Theory That Different Parcels of Real Estate Were Subject to Different Uses Thereby Gaining Exemption from Taxation in Violation of Its Fourteenth Amendment Right.

Illinois law has long recognized that different portions, even different floors of the same piece of real estate may have different uses and thus be afforded different treatment for purposes of establishing tax exemption. *First Methodist Episcopal Church* v. *City of Chicago*, 26 Ill. 482 (1861); *City* of *Lawrenceville* v. *Maxwell*, 6 Ill. 2d 45 (1955).

In the 1970 tax case, *People ex rel. County Collector* v. *Hopedale Medical Foundation*, 46 Ill. 2d 450, 264 N. E. 2d 4 (1970), involving the years 1961 through 1966, both parties stipulated that the Hopedale Medical Complex was one indivisible unit for purposes of that proceeding. Having done so in 1970 to expeditiously resolve that pending controversy, petitioner finds itself, in the language of the appellate court, foreclosed from availing itself of a principal theory for bringing the action below:

> "Ergo it follows that if there was no basis for a division on the property prior to the 1970 Tax Case then nothing has transpired since then to provide such a basis."

Such a constriction giving preclusive effect to a stipulation in a cause involving different issues vitiates petitioner's right of procedural due process to avail itself of every possible defense it might have, *Lindsay* v. *Normet*, 405 U. S. 56 (1972), and further will deter others from entering into stipulations for fear of the repercussion many years later.

CONCLUSION.

Wherefore, for the foregoing reasons petitioner prays that this petition for writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A.

NOTICE OF DENIAL OF PETITION FOR LEAVE TO APPEAL TO THE ILLINOIS SUPREME COURT DATED SEPTEMBER 28, 1978.

ILLINOIS SUPREME COURT
Clell L. Woods, Clerk
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

September 28, 1978

Mr. David B. Mueller
Attorney at Law
Cassidy, Cassidy, Mueller
& Price
800 Lehmann Building
Peoria, Illinois 61602

No. 50889—The Hopedale Medical Foundation, petitioner, v. Tazewell County Collector, respondent. Leave to appeal, Appellate Court, Third District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ CLELL L. WOODS
Clerk of the Supreme Court

APPENDIX B.

OPINION OF THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT, DATED MAY 11, 1978.

No. 76-548

IN THE APPELLATE COURT OF ILLINOIS
Third District
A. D. 1978

THE HOPEDALE MEDICAL FOUNDATION,
Plaintiff-Appellant,

vs.

TAZEWELL COUNTY COLLECTOR,
Defendant-Appellee,

and

ROBERT BURROUGHS,
Intervening Petitioner.

Appeal from the Circuit Court of Tazewell County.

Honorable James D. Heiple, Presiding Judge.

MR. JUSTICE SCOTT delivered the opinion of the court:

This is an appeal from various judgment orders entered by the circuit court of Tazewell County. On September 3, 1976, the trial court awarded judgment to the defendant, Tazewell County Collector, on eight consolidated tax objection cases (for the years 1967 through 1974) in which the plaintiff, The Hopedale Medical Foundation, was seeking a declaration that its real estate was used for charitable purposes and therefore exempt from real estate taxation. On September 16, 1976, the

trial court granted relief sought by the defendant in its counterclaim by finding that the plaintiff was liable for penalties due to its failure to pay taxes during the years in question. Robert Burroughs intervened in the trial court proceedings by claiming tax deeds to the real estate in question but the intervenor made no court appearances, did not pursue his claim and is not a party to this appeal.

We would be guilty of prolixness if we set forth a detailed recital of the origin and development of The Hopedale Medical Foundation for the same is already clearly and adequately set forth in the case of *People ex rel County Collector* v. *Hopedale Medical Foundation* (1970), 46 Ill. 2d 450, 264 N. E. 2d 4, hereinafter referred to as 1970 Tax Case. We will recite additional facts as they become pertinent to this appeal.

In the 1970 Tax Case decided in 1970 our supreme court denied the plaintiff foundation exemption from real estate taxation for the reason that it was not used exclusively for charitable purposes. The tax years involved in the 1970 Tax Case were 1961 through 1966. The litigation which is the subject of this appeal was commenced on March 15, 1976, some five and one-half years after our supreme court decision in the 1970 Tax Case. The litigation which is the subject of this appeal commences with tax objections for the year 1967 and for the next seven consecutive years and the paramount issue is the same as that which was raised in the 1970 Tax Case, to-wit, whether or not the plaintiff, The Hopedale Medical Foundation, is entitled to a real estate exemption because it is used for charitable purposes.

One may well ask why the trial court permitted this question to be relitigated and it may well be that it should not have been permitted on the theory of estoppel by verdict. (*Turn Verein Lincoln* v. *Paschen* (1960), 20 Ill. 2d 229, 170 N. E. 2d 111.) We are aware, however, that the doctrine of *res judicata* is technically inapplicable in tax cases because each claim of exemption for a particular tax year constitutes a

separate cause of action. We therefore quarrel not with the trial court's denial of the defendant's motion which attempted to bar a relitigation of the issue relating to the plaintiff foundation's claim of tax exemption.

The trial court permitted the plaintiff foundation to have its day in court and in this appeal we are naturally confronted with the question as to whether in the years subsequent to 1966 there was a change in the circumstances and operation of the plaintiff foundation. The answer to this question is in the negative. The record in this cause discloses that all of the directors of the foundation admitted that no changes had been effected or authorized in the operation and organization of the plaintiff foundation since the supreme court decision of 1970. It is apparent from the record that the operation and organization of the plaintiff foundation was the same as it had been in the years of 1961 through 1966 which our supreme court found to be such as to defect a claim for tax exemption.

From 1967 through 1971 Dr. Rossi continued to operate a private medical practice, a private pharmacy, and a consultation business on the property of the foundation.

The law is settled that it is encumbent upon a property owner to show clearly that its organization and use of property falls within the provisions of the statute respecting the exemption of charitable organizations from taxation. *Rotary International* v. *Paschen* (1958), 14 Ill. 2d 480, 153 N. E. 2d 4.

The statutory provisions relating to the exemption of property used for charitable purposes are as follows:

> "All property described in Sections 19-1 through 19.24 to the extent therein limited is exempt from taxation. * * * " Ill. Rev. Stat. 1975, ch. 120, sec. 500.
>
> "500.7—*Charitable Institutions.* Sec. 19.7. All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, and all property of old people's homes, when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit; * * *." Ill. Rev. Stat. 1975, ch. 120, sec. 500.7.

The foregoing statutory provisions implemented the authority for the tax exemption of property used exclusively for charitable purposes which was granted in article IX, section 3 of the Constitution of the State of Illinois 1870, and which is found in article IX, section 6 of the Constitution of Illinois 1970.

The all encompassing issue raised by the plaintiff foundation in this appeal is that it is an institution of public charity as defined by statute (Ill. Rev. Stat. 1975, ch. 120, sec. 500.7) and consequently is entitled to a real estate taxation exemption. In buttressing this contention the plaintiff foundation first argues that the record in this cause fails to show a disqualifying benefit which was received by anyone and secondly, that in any event the primary use of the property involved was charitable.

We recognize that our reviewing courts in determining whether tax exemption should be granted to certain institutions have considered the theories of "inurement of benefit" and the "primary and secondary use." We do not deem it necessary to analyze the holdings of these various cases since we believe that the law is still well settled to the effect that when the income of an institution inures to the benefit of a private individual engaged in managing a charity, the institution loses its status as a charitable institution even though that institution might primarily be of a charitable nature. *Sisters of the Third Order of St. Francis* v. *Board of Review* (1907), 231 Ill. 317, 83 N. E. 272.

The plaintiff foundation asserts that the *St. Francis* case no longer sets forth the applicable law as to the test for charitable institutions seeking tax exemption and advances the argument that there can be no benefit to any individual if that individual exchanges "value for value." It is the plaintiff foundation's theory that any compensation received by Dr. Rossi was commensurate with the actual services rendered by him. This ap-

proach in determining whether or not there was any inurement of a benefit to an individual is a novel one and we find no law supporting the proposition that the courts of this state must make a *quid pro quo* analysis in determining the inurement of benefits.

Assuming *arguendo* that a *quid pro quo* analysis should be made we direct our attention to the facts in the instant case. At the outset we are cognizant of the fact that the trial court, as well as counsel for all parties, recognized the dedication and ability of Dr. Rossi and the benefits inuring to the Hopedale community from the medical complex which was created and has been perpetuated largely through the doctor's efforts. Unfortunately dedication and ability do not erase disqualifying benefits received by an individual. Dr. Rossi's life became so imbued in and enmeshed with the activities and affairs of the medical complex that he either could not or would not divorce his private financial activities from those of the foundation. The 1970 Tax Case clearly set forth guidelines and rang a bell of warning as to what the doctor's role in the foundation should be in future years if a tax exemption was to be forthcoming, yet in the next eight consecutive years he continued to commingle his private affairs with that of the foundation.

Throughout the years in question in the instant case, to-wit, 1967-1974, Dr. Rossi served as medical director and administrator of the foundation. His salary throughout these years ranged from $15,000 to $60,000 per annum. While the foundation had a board of directors it is abundantly clear from the record that day to day decisions on both routine and policy matters were left to the decision of the doctor. There was never any vote by the board to authorize the payment of an $11,000 judgment plus attorney fees which had been entered against the doctor, yet the same was paid by the foundation. The doctor continued throughout the years to practice medicine on the facilities of the foundation. His income from this practice was from $30,000 to $40,000 per year. It is significant to note that

the foundation opened and maintained what was referred to as satellite officers in the nearby villages of Emden, McLean and Manito. Dr. Rossi as well as other doctors used these medical offices and the rental to be paid for such use was determined by Dr. Rossi. He paid the sum of $100 per month while other doctors paid the sum of $800 per month. For the years of 1969, 1970, and 1974 Dr. Rossi paid no rent but over the course of years treated the second highest number of patients in the satellite offices. Throughout the years in question the doctor received a total of $459,489.72 as direct payments from the foundation. In round numbers this sum includes $99,000 plus interest as payment on a real estate mortgage, $300,000 as salary, $600 for employee examinations, $6,200 for anesthetist services, and $3,500 for providing medical care to individuals who had made donations to the foundation in return for a promise of free lifetime medical care.

Dr. Rossi after the 1970 Tax Case continued to operate his privately owned pharmacy in the Medical Arts Building of the medical complex. While the record discloses that records regarding the pharmacy operation are for the most part nonexistent, it is clear that the operation was commingled with the overall operation of the foundation. After certain computations were made the pharmacy received 95% of the price charged to a patient for drugs and the foundation received 5%. The record establishes that from this privately operated business Dr. Rossi realized a profit.

As the result of his expertise in the creation and operation of nursing homes and other health facilities Dr. Rossi was called upon for advice and consultation by various hospitals and nursing homes. Dr. Rossi became quite involved with requests for assistance from various individuals and groups who sought his advice regarding the construction and operation of nursing home and medical facilities. As a result of this involvement he organized a consultation business known as Rossi and Associates. The business was operated on the premises of the

foundation. The consultation business listed its address as that of the foundation as well as the foundation's telephone number. Dr. Rossi made a reimbursement to the foundation for the cost of long distance phone calls, however, no payment was made to the foundation for the use of secretarial equipment, use of the postage meter or the photostat machine. The only expenses incurred by Rossi and Associates were the expenses incurred in hiring the services of other individuals. The record discloses that the doctor spent from ten to fifteen hours per week working for Rossi and Associates and that from this business he derived a profit.

The record in this cause is voluminous and covers other areas of alleged inurement, to-wit, telephone expenses, cash disbursements to a motel owner by the doctor, courtesy discounts, employment of family members and other miscellaneous matters. We do not deem it necessary to delve further into the question of benefits derived by Dr. Rossi as the result of his association with the foundation. We have not set forth the foregoing activities of Dr. Rossi for the purpose of indicting him for wrongdoing. We are only concerned with whether the plaintiff foundation is entitled to a tax exemption. We do not accept the theory advanced by the plaintiff foundation that we must make a *quid pro quo* analysis in order to determine if value received equals value given. We find no law supporting such a theory, but should this have been the law it is evident that Dr. Rossi would have failed the test. He has failed to divorce his private activities and income from that of the foundation and has realized a profit or benefit at the expense of the foundation and consequently the trial court was correct in denying the plaintiff foundation tax exemption from the assessment and payment of real estate taxes. *People ex rel County Collector* v. *Hopedale Medical Foundation* (1970), 46 Ill. 2d 450, 264 N. E. 2d 4; *Sisters of the Third Order of St. Francis* v. *Board of Review* (1907), 231 Ill. 317, 83 N. E. 272.

The plaintiff foundation further contends that the denial of a tax exemption to its property is violation of the equal protection

clause of both the Illinois and Federal Constitutions. In support of this contention it is submitted by the plaintiff that in other communities physicians from the medical staff serve on the board of directors of a hospital, i.e., the cities of Carbondale, Elgin, Rockford, and Proctor Hospital at Peoria, and that in other instances compensated administrative officers sit as voting members of the governing bodies of hospitals. The plaintiff infers that a Draconian rule of law has been applied to its operation. We do not profess to be too knowledgeable of the legal code of 621 B. C. promulgated by the Athenian Draco, however, we are not impressed by the denial of equal protection argument presented by the plaintiff foundation. We accept the fact that in many instances physicians on a hospital's medical staff serve as well on its board of directors, as does a layman hospital administrator. We do not, however, equate these situations with a situation where a doctor operates a privately owned pharmacy, a consultation business on the property of a medical complex, and who further rents space on a preferential basis, uses the hospital facilities for his private practice and is for all practical purposes the sole decision maker on financial, policy and routine matters. We find no denial of the constitutional equal protection clauses as claimed by the plaintiff foundation.

The plaintiff foundation next claims that it was entitled to a separate consideration of the distinct uses made of various portions of its property.

We are aware of the cases where our courts have recognized that a single tract of land may be divided into several uses, some of which are exempt and some of which are not. *First Methodist Episcopal Church* v. *City of Chicago* (1861), 26 Ill. 482, *Glen Oak Cemetery Co.* v. *Board of Appeals* (1934), 358 Ill. 48, 192 N. E. 673; *Illinois Institute of Technology* v. *Skinner* (1971), 49 Ill. 2d 59, 273 N. E. 2d 371.

In the 1970 Tax Case counsel for both parties agreed that the facilities of The Hopedale Medical Foundation, including the Hopedale House, the nursing home and the nurses' residence,

were interrelated parts of a single medical complex. In that case our supreme court stated in effect that it had not discovered any basis upon which to sever the facilities of the complex into taxable and tax-exempt components. (*People ex rel County Collector* v. *Hopedale Medical Foundation* (1970), 46 Ill. 2d 450, 264 N. E. 2d 4.) As we have previously stated, the record is replete with testimony to the effect that after the 1970 Tax Case there were no changes in the circumstances and operations of the foundation, ergo it follows that if there was no basis for a division on the property prior to the 1970 Tax Case then nothing has transpired since then to provide such a basis.

As we have previously determined, the plaintiff foundation failed to carry the burden of proving that it was a charitable institution entitled to tax exemption due to the inurement of benefits received by Dr. Rossi from the foundation in its entirety. The component parts of the foundation are all interrelated and hence we find no basis for a division of its property for purposes of taxation.

Lastly, the plaintiff foundation claims that the trial court improperly imposed penalties upon the unpaid real estate taxes for the years 1969 through 1974.

It is the plaintiff foundation's contention that the applicable statutory provision is chapter 675 of the Revenue Act (Ill. Rev. Stat. 1975, ch. 120, sec. 675). With this contention we disagree. Section 675 of our Revenue Act pertains to the payment of taxes under protest and does not relate to the matter of penalties.

The applicable statute as to penalties is Section 705 of the Revenue Act (Ill. Rev. Stat. 1975, ch. 120, sec. 705) which provides in part as follows:

> "* * * all real estate upon which the first installment of taxes for years subsequent to the year 1950 remains unpaid on the first day of June annually shall be deemed delinquent as to such first installment * * * and such unpaid first installment shall bear interest after the first day of June annually at the rate of 1% per month until paid or forfeited; and all real estate upon which the second installment of taxes remains due and unpaid on the first day of September, annually, shall be deemed delinquent as to such second installment, and such unpaid taxes as to such second installment shall bear interest after the first day of September, at the rate of one percent per month until paid or forfeited." Ill. Rev. Stat. 1975, ch. 120, sec. 705.

The above quoted statutory provision clearly relates to the imposition of penalties for delinquent payment of taxes. The plaintiff foundation elected not to pay under protest even a portion of the taxes assessed against its property, but instead filed objections each year and sought relief by a suit for declaratory judgment. Upon failing to prevail in the declaratory judgment action the trial court was correct in imposing penalties as provided for in section 705 of the Revenue Act (Ill. Rev. Stat. 1975, ch. 120, sec. 705).

A case notably similar to the instant case is *People ex rel. Stuckart* v. *N. J. Sandberg Co.* (1917), 282 Ill. 245, 118 N. E. 469. In the case of *Sandberg* our supreme court in a case relating to penalties assessed after objections to a tax had been filed and the matter litigated found that the statute fixes the penalty and the court has no power to waive it. The plaintiff foundation cites as authority for the proposition that no penalties should have been assessed the case of *Lakefront Realty Corporation* v. *Lorenz* (1960), 19 Ill. 2d 415, 167 N. E. 2d 236. In the *Lakefront* case it was held that a successful taxpayer was not entitled to interest on moneys refunded because no provision was made for such an award under section 675 (Ill. Rev. Stat. 1959, ch. 120, sec. 675). It is the reasoning of the plaintiff foundation that the converse should be true in that a court would be without authority to enter a judgment awarding interest or penalties to a county on an objected tax payment. In our opinion the plaintiff's reasoning is in error in that it presupposes that the penalties assessed in the instant case were done so by virtue of statutory authority found in section 675 of our Revenue Act. As we have stated, such was not the case since

the provisions of section 705 were utilized which expressly provides for penalties.

The defendant has cross appealed in this cause and claims that the trial court erred in denying its motion for the taxation of reasonable expenses and attorney fees. To agree with the defendant we must find that the plaintiff foundation failed to act in good faith in regard to instituting the litigation which is the subject of this appeal. (Ill. Rev. Stat. 1975, ch. 110, sec. 41.) We will not so hold, since as we have previously observed the doctrine of *res judicata* is inapplicable in tax cases. The plaintiff foundation sought tax exemption on different theories than those posed in the 1970 Tax Case. That we do not agree with the theories does not therefore impute bad faith on the plaintiff foundation and therefore we will not reverse the judgment of the trial court as to the allowance of expenses and attorney fees to the defendant.

For the reasons stated the judgments and orders of the trial court which denied the relief sought by the plaintiff foundation and which assessed penalties on the unpaid taxes of the foundation is affirmed.

Affirmed.

STENGEL, *J.*, and STOUDER, *P.J.* concur.

APPENDIX C.

ORDERS OF THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT, TAZEWELL COUNTY, ILLINOIS, DATED SEPTEMBER 3, 1976 AND SEPTEMBER 16, 1976.

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ILLINOIS

Tazewell County

Civil Division

THE HOPEDALE MEDICAL FOUNDATION, *Plaintiff*,	Nos. 68-X 1478 69-X-1100 70-X-1118 71-X-1271
vs.	72-X-1179 73-Z-1530
TAZEWELL COUNTY COLLECTOR, *Defendant*.	74-X-1357 75-Z-1710

JUDGMENT ORDER

This cause came on to be heard on the Tax objections and Complaints for Declaratory Judgment of the Plaintiff and the Answers thereto of the Defendant:

Plaintiff, the Hopedale Medical Foundation, appeared by David Mueller of the law firm of Cassidy, Cassidy & Mueller, and Defendant, Tazewell County Collector, appeared through Carl F. Reardon, as Special Assistant State's Attorney for Tazewell County;

After having considered the pleadings and after having heard the testimony of witnesses of the respective parties, and after being otherwise fully advised in the premises,

The Court Finds:

1. That this Court has jurisdiction of the parties hereto and the subject matter hereof.

2. That the Plaintiff failed to prove its contention that it had been denied Equal Protection of the law under the Constitutions of the United States and the State of Illinois.

3. That the property of The Hopedale Medical Foundation during the tax years in question was not used exclusively for charitable purposes as required by the Illinois Constitution of 1971 and the applicable statutes of the State of Illinois.

4. That the property of The Hopedale Medical Foundation during the tax years in question was used at least in part for the benefit of Dr. Lawrence J. Rossi and that gain or profit, in a private sense, has inured to Dr. Lawrence J. Rossi, a person connected with management of The Hopedale Medical Foundation.

5. No sound basis exists for a division of The Hopedale Medical Complex into taxable and non-taxable components.

6. That the issues in each of the cases for each of the tax years in question are in favor of the Defendant and against the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. That the property of The Hopedale Medical Foundation for each of the tax years in question in this litigation is fully taxable and that Plaintiff's prayer for a declaratory judgment that said property should be exempt from taxation is hereby denied.

Entered this 3rd day of September, 1976.

/s/ JAMES D. HEIPLE
Circuit Judge

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ILLINOIS

Tazewell County

HOPEDALE MEDICAL FOUNDATION, *Plaintiff,* vs. TAZEWELL COUNTY COLLECTOR, *Defendant,* ROBERT BURROUGHS, *Intervening Petitioner.*	Nos. 67-X-1537 68-X-1478 69-X-1100 70-X-1118 71-X-1271 72-X-1179 73-Z-1530 74-X-1357 75-Z-1710

ORDER

This cause came on to be heard on the following petitions and motions:

(1) Petition for Declaration of Rights filed by Plaintiff, the Hopedale Medical Foundation;

(2) Petition for Declaration of Rights filed by Robert Burroughs, intervening Petitioner;

(3) Counterclaim for Declaration of Rights filed by Defendant, Tazewell County Collector;

(4) Motion for Taxation of Reasonable Expenses and Attorneys' Fees filed by Defendant, Tazewell County Collector; and

Plaintiff, the Hopedale Medical Foundation, appeared through the law firm of Cassidy, Cassidy & Mueller, David Mueller and Richard D. Price, Jr., of counsel, and Defendant, Tazewell County Collector, appearing through C. Brett Bode, State's Attorney of Tazewell County, and Carl F. Reardon, a special appointed Assistant State's Attorney for Tazewell County, and Matt Burroughs, tax purchaser,

Robert Burroughs, Intervening Petitioner, appeared neither in person nor through their attorneys, Lawrence W. Propp and Elliott B. Young, and Richard Burgess; and

The Court heard arguments of the respective parties and reviewed the written briefs of the respective parties and being fully advised in the premises and finding that this court has jurisdiction of the parties hereto and the subject matter hereof;

It is therefore, ordered, adjudged and decreed;

1. The Petition for Declaration of Rights filed by Plaintiff, the Hopedale Medical Foundation, be and the same is hereby granted.

2. The Petition for Declaration of Rights filed by Intervening Petitioner, Robert Burroughs, be and the same is hereby denied;

3. The Counterclaim for Declaration of Rights filed by Defendant, Tazewell County Collector, be and the same is hereby granted; and

4. The Motion for Taxation of Reasonable Expenses and Attorneys' Fees be and the same is hereby denied.

ENTER: September 16, 1976.

/s/ JAMES D. HEIPLE
Judge

Approve as to form:

/s/ CARL F. REARDON
/s/ DAVID B. MUELLER